IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 33092 of 2006(M)

PETITIONER:

M/S.KAIRALI GRANITES,
N.H. BYE PASS, VYTTILA, KOCHI,
REPRESENTED BY ITS PROPRIETOR,
MR.V.R. NARAYANAN EMBRAN.

BY ADV. SRI.K.SRIKUMAR
SRI.K.MANOJ CHANDRAN
SRI.P.R.AJITHKUMAR

RESPONDENTS:
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1. THE COMMERCIAL TAX OFFICER,
VAT IIND CIRCLE, MATTANCHERY, ERNAKULAM.

2. THE INTELLIGENCE INSPECTOR,
SQUAD NO.III, DEPARTMENT OF COMMERCIAL TAXES,
ERNAKULAM.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
COMMISSIONERATE OF COMMERCIAL TAXES,
PUBLIC UTILITY BUILDING, OPP.MUSEUM,
THIRUVANANTHAPURAM.

4. THE STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, GOVT.OF KERALA,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.JULIAN XAVIER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

W.P.(C) NO. 33092 OF 2006

Dated this the 15th day of December, 2006

J U D G M E N T

The petitioner is the proprietor of M/s.Kairali Granites who is a registered dealer under the KGST Act and Central Sales Tax Act. He is also a registered dealer under the Kerala Value Added Tax. Petitioner purchased Kota Stone of two sizes, more particularly 401 pieces of Kota Stones of ½ inches and 1005 pieces of ¾ inches from Shubh Laxmi Marble, Chittorgarh from Rajastan. The value of the goods is also shown in the invoice of Exhibit P1. The goods reached Kerala through rails, and from there it was being transported to the petitioner's premises. The goods were intercepted and Exhibits P3 and P4 notices were issued by the Intelligence Inspector, Squad No.III and the petitioner was asked to furnish security deposit, in lieu of detention of an amount of Rs.10,078/- being double the amount of tax attempted to be evaded. As per Exhibit P3, on verification of the goods in the premises of the transporter the value declared appears to be low and suspected undervaluation.

2. The petitioner contends that the value of the goods is

as declared in the invoice and the suspicion entertained by the officer is untrue and this is nothing but an arbitrary action on the part of the officer requiring the petitioner to furnish security for double the amount of tax when he has evidently declared the correct value and there is no reason to think that he has undervalued the goods. He also submitted that in case the department feels that the goods were undervalued they would have very well exercised their right under Section 45 of KVAT Act. Hence, the learned Government pleader was asked to get instructions as to whether the department is willing to purchase the goods under Section 45 of the Act if according to them it is undervalued.

3. On instructions, the learned Government pleader submits that they are prepared to purchase the goods in accordance with the value as stipulated under Section 45 of the KVAT Act. He also produced the written instructions in this regard for the perusal of this court. Instructions given to the learned Government pleader by the Intelligence Officer reads thus:

> The Department is ready to purchase the material contained in container No. ILCU-6502941 (Grinded Kotta stone) 6629.sq.ft as per the existing provisions of the Act.

The invoice value is Rs.49,204/-. They have shown freight charges and local freight and other expenses besides the above, 10%.

4. Petitioner is willing to part off the property for the said price to the Department, in case, the goods are not to be released without insisting for payment of double the tax.

5. Having heard both sides, there will be direction that either the Department shall pay an amount of Rs.1,17,260/- to the petitioner and purchase the goods within a period of one week from today, failing which the goods shall be released on executing a self bond.

Writ petition is disposed of as above.

P.R.RAMAN, JUDGE

Rp